APPELLANT PRO SE:

ROBERT LETURGEZ, SR.
Carlisle, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

ANN L. GOODWIN
Special Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ROBERT LETURGEZ, SR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 36A01-0607-PC-315
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable William Vance, Judge
Cause No. 36C01-0605-PC-00002

MARCH 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Petitioner-Appellant Robert Leturgez, Sr. appeals the trial court's denial of his petition for post-conviction relief.

We affirm.

Leturgez presents two issues for our review, which we restate as:

I. Whether the post-conviction court erred by not making findings of fact and conclusions of law

II. Whether the post-conviction court erred by summarily denying Leturgez's petition for post-conviction relief.

On November 9, 2001, Leturgez was paroled from the Indiana Department of Correction. On May 14, 2003, Leturgez was served with a parole violation warrant based upon new criminal charges filed against him for the offense of arson. On September 26, 2003, Leturgez pleaded guilty to the arson charge and was sentenced to fifteen years with five years suspended. Leturgez's parole revocation hearing was held on December 12, 2003, at which time, the parole board revoked his parole. On May 23, 2006, Leturgez filed his petition for post-conviction relief. The trial court denied Leturgez's petition without a hearing on June 19, 2006.

Leturgez contends that the post-conviction court erred when it denied his petition. Particularly, Leturgez argues that the court erred because it did not issue findings of fact and conclusions of law when it denied his petition and because the court denied his petition without a hearing.

The purpose of a petition for post-conviction relief is to provide a means for raising issues unknown or unavailable to a defendant at the time of the original trial and

appeal. *Capps v. State*, 709 N.E.2d 24, 25 (Ind. Ct. App. 1999), *trans. denied*. A post-conviction petition under Ind. Post-Conviction Rule 1 is a quasi-civil remedy, and, as such, the petitioner bears the burden to prove by a preponderance of the evidence that he or she is entitled to relief. *Mato v. State*, 478 N.E.2d 57, 60 (Ind. 1985); P-C.R. 1, § 5.

To the extent the post-conviction court has denied relief, the petitioner appeals from a negative judgment and faces the rigorous burden of showing that "the evidence as a whole leads unerringly and unmistakably" to a conclusion opposite that reached by the post-conviction court. *Harris v. State*, 762 N.E.2d 163, 166 (Ind. Ct. App. 2002), *reh'g denied*, *trans. denied*. Thus, we will not set aside the post-conviction court's ruling unless the evidence is without conflict and leads solely to a result different from that reached by the post-conviction court. *Stewart v. State*, 517 N.E.2d 1230, 1231 (Ind. 1988). In making this determination, we consider only the evidence that supports the decision of the post-conviction court together with any reasonable inferences. *McCullough v. State*, 672 N.E.2d 445, 447 (Ind. Ct. App. 1996), *trans. denied*.

Leturgez asserts as error the post-conviction court's failure to include findings of fact or conclusions of law in its decision. Although we could remand this case to the post-conviction court for entry of findings of fact and conclusions of law, it is not necessary or required. The failure of the post-conviction court to enter specific findings of fact and conclusions of law is not reversible error. *Allen v. State*, 749 N.E.2d 1158, 1170 (Ind. 2001), *reh'g denied*, *cert. denied*; *see also Lineberry v. State*, 747 N.E.2d 1151, 1154 (Ind. Ct. App. 2001). Rather, we will perform a *de novo* review of the claim on its merits. *See Allen*, 749 N.E.2d at 1170.

Pursuant to Post-Conviction Rule 1, section 4, there are two ways in which a court may deny a post-conviction petition without a hearing. Post-Conviction Rule 1, section 4(f) provides that if the pleadings conclusively show that the petitioner is not entitled to relief, the court may deny the petition without further proceedings. In addition, Post-Conviction Rule 1, section 4(g) states that the court may grant a motion by either party for summary disposition of the petition when it appears from the pleadings and other evidence submitted that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Disposal of a petition under each of these two subsections brings about two different standards of review on appeal. *Allen v. State*, 791 N.E.2d 748, 752 (Ind. Ct. App. 2003), *trans. denied*.

In the present case, the chronological case summary indicates that neither party moved for summary disposition of Leturgez's petition. Further, the court made its decision based only on the pleadings. Thus, the post-conviction court's decision must have been made pursuant to section 4(f). *See id*. at 753-54 (determining that post-conviction relief petitioner's petition must have been denied pursuant to P-C.R. 1, § 4(f) rather than P-C.R. 1, § 4(g) because CCS indicated that neither party moved for summary disposition and court made its decision based only upon pleadings).

As a result, we will review the denial of Leturgez's petition under the standard of review for section 4(f) of Post-Conviction Rule 1. When a court disposes of a post-conviction petition under sub-section (f), we review the court's decision as we would a motion for judgment on the pleadings. *Id*. at 752. If the petition alleges only errors of law, then the court may, without a hearing, determine whether the petitioner is entitled to

relief. *Id*. at 753. However, if the facts pleaded by the petitioner raise an issue of possible merit, the petition should not be disposed of under section 4(f). *Id*. This is the case even if the petitioner has only a slight chance of establishing his claim. *Id*.

Leturgez claims that the parole board did not hold his parole revocation hearing within sixty days as required by Ind. Code § 11-13-3-10(a)(1). This statute governs the manner in which parole revocation hearings are conducted and provides, in pertinent part:

> (a) Parole revocation hearings shall be conducted as follows:
>
> (1) A parolee who is confined due to an alleged violation of parole shall be afforded a parole revocation hearing within sixty (60) days after the parolee is made available to the department by a jail or state correctional facility, if:
>
> (A) there has been a final determination of any criminal charges against the parolee; or
> (B) there has been a final resolution of any other detainers filed by any other jurisdiction against the parolee.
>
> (2) A parolee who is not confined and against whom is pending a charge of parole violation shall be afforded a parole revocation hearing within one hundred eighty (180) days after the earlier of:
>
> (A) the date an order was issued for the parolee's appearance at a parole revocation hearing; or
> (B) the date of the parolee's arrest on the parole violation warrant.
>
> * * * * * *
>
> (e) Unless good cause for the delay is established in the record of the proceeding, the parole revocation charge shall be dismissed if the revocation hearing is not held within the time established by subsection (a).

Ind. Code § 11-13-3-10. Here, Leturgez was served with a parole violation warrant on May 14, 2003. On September 8, 2003, in an unrelated case, Leturgez pleaded guilty to

operating while intoxicated (OWI) and received a sentence of ninety days. Later that same month, on September 26, 2003, Leturgez pleaded guilty to a charge of arson, the offense upon which his parole violation was based. For his conviction of arson, he was sentenced to fifteen years, with five years suspended. His parole revocation hearing was held on December 12, 2003 after he was received at the Department of Correction upon completion of his sentence for his conviction of OWI. Leturgez argues that after September 26, 2003, when he entered his plea to the parole-violating charge of arson, there had been a final determination of criminal charges against him and there were no other detainers against him from any other jurisdictions. Therefore, he maintains, the sixty days provided for in Ind. Code § 11-13-3-10(a)(1) began to run at that time, making his hearing on December 12, 2003 untimely.

From the date of his sentencing on September 26, 2003, Leturgez was confined for a combination of the alleged violation of his parole, the ninety-day sentence he received for his conviction of OWI, and the ten-year sentence imposed for his arson conviction. He completed service of his OWI sentence on November 13, 2003. Exhibit B to Petitioner's Petition for Post-Conviction Relief at 3. Accordingly, from November 13, 2003, prior to the expiration of the sixty days, to December 12, 2003 when the parole revocation hearing was held, Leturgez was held for both the alleged violation of parole and the sentence imposed for his arson conviction. Ind. Code § 11-13-3-10 requires that the revocation hearing shall be held within 60 days if the parolee "is confined due to an alleged violation of parole." Ind. Code § 11-13-3-10(a)(1). At the time in question in this case, Leturgez would have been confined regardless of his alleged parole violation

because he was ordered to serve ten years for his conviction of the offense of arson. Thus, Leturgez was not confined due solely to an alleged violation of parole. Rather, Leturgez would have been in custody even without the pending parole violation. Moreover, section (c) of Ind. Code § 11-13-3-10 provides that if the parolee has committed a new felony, "the parole board shall revoke the parole and order continuous imprisonment." Leturgez admitted to committing the Class B felony of arson, and, as a result, the parole board was required to revoke his parole and order imprisonment. *See Lawson v. State*, 845 N.E.2d 185 (Ind. Ct. App. 2006) (holding that requirement of Ind. Code § 11-13-3-10 that parole revocation hearing be held within 60 days if parolee is confined due to alleged violation of parole was inapplicable where parolee was not confined due solely to alleged violation of parole from date of sentencing until parole revocation hearing). Thus, the parole board did not err when it revoked Leturgez's parole, and the post-conviction court did not err when it denied Leturgez's claim as a matter of law based upon the pleadings.

Based upon the foregoing discussion and authorities, we conclude that the post-conviction court did not err by failing to make findings of fact and conclusions of law and by summarily denying Leturgez's petition for post-conviction relief.

Affirmed.

BAILEY, J., and CRONE, J., concur.